

# **TRURO PLANNING BOARD HANDBOOK & POLICIES**

**ADOPTED JUNE 29, 2011**



# **THE TRURO PLANNING BOARD HANDBOOK**

Approved June 29, 2011

## **REFERENCE MATERIAL**

**Chapter 40A – Massachusetts General Laws.** This document of legislated laws deals with concepts, procedures, requirements, and restrictions of zoning.

**Chapter 41 – Massachusetts General Laws.** Municipal Planning and Subdivision Legislation. This document of legislated law deals with procedures, requirements, and restrictions of municipal planning and the subdivision of land.

**Open Meeting Law Massachusetts General Laws Chapter 39, Section 23B.** This law mandates with certain exceptions, that all governmental meetings and records be open to and available for inspection by the public.

**Town of Truro Rules and Regulations.** Town of Truro, Rules and Regulations Governing the Subdivision of Land. This document sets forth with the guidelines of Chapter 41 the requirements and standard for subdividing land within the Town of Truro.

**Town of Truro Zoning By-Law, Sign Code.** This document set forth the by-laws and ordinances which regulate the use of land, buildings, structures and signs within the town.

## **PURPOSE**

This booklet is an accumulation of material on Planning Board (Board) duties, requirements, and procedures. The intention is to provide guidance and reference for Board members and not to supersede any existing laws or regulations. This booklet also contains the Board's Policies.

## **DUTIES OF PLANNING BOARD**

### **The Planning Board is:**

- responsible for administration of the Subdivision Control Laws as set forth in Massachusetts General laws Chapter 41.
- responsible pursuant to MGL c. 41, §81C for making careful studies; for preparing, when necessary, plans of the resources, possibilities, and needs of the Town; and, for reporting annually to the town regarding the condition of the Town (report appears in the Annual Town Reports).
- responsible for making a Master or Study Plan from time to time (MGL c. 41, §81D).
- responsible for establishing an official map (MGL c. 41, §81E-H).

## **REORGANIZATION OF PLANNING BOARD**

### **Election of Officers**

At the first meeting of the Planning Board after the annual Town Election, as the first order of business, the Board shall elect from its members by majority vote of all sitting members the following officers to serve through the following year's annual Town Election:

- Chair
- Vice-Chair
- Clerk

### **Procedure and Vote**

The current ranking officer, the Acting Chair, will call for nominations from the board members. A successful nomination will require a second recommendation from another member. More than one nomination can be accepted for each position. When all nominations have been accepted the Acting Chair will call the vote.

If the nominations result in a single person for each position, a simple showing of hands shall constitute a vote. However, if there is a duplicate nomination for the same position a secret ballot may be used at the option of the board.

## **JOB DESCRIPTION OF OFFICERS AND MEMBERS OF THE PLANNING BOARD**

### **DUTIES**

#### **CHAIR SHALL:**

- Preside at all meetings of the Board and Public Hearings.
- Set the agenda for each meeting of the Board, with the assistance of the Assistant Town Administrator.
- Appoint subcommittees or appoint individual members of the Board to investigate subjects of interest to the Board.
- Shall respond to requests from interested parties for information about zoning and subdivision control.
- In no case shall the Chair speak for the Board unless duly authorized to do so by a majority vote of the Board.
- Only the Chair shall speak with the press after initially discussing the matter with the Board.

#### **VICE CHAIR SHALL:**

- Take over duties of Chair when the Chair is unable to perform his/her duties.

#### **CLERK SHALL:**

- Take over duties of Chair when the Chair and Vice Chair are unable to perform his/her duties.

#### **PLANNING BOARD MEMBERS SHALL:**

- Attend as many meetings as possible, including site visits, alerting the Chair and the Assistant Town Administrator when they are unable to attend a meeting.
- Be prepared to do some work outside of regular meetings.

### **AGENDA, MEETINGS & MINUTES**

#### **AGENDA:**

- The agenda shall follow the requirements established within the *Planning Board Agenda Policy*. See Appendix 1
- The agenda items shall be clearly identified.

#### **MEETINGS:**

- The Board shall meet per the *Truro Planning Board Hearing/Meeting Schedule*, approved by the Board annually in the month of October for the coming calendar year. The Board may, at its discretion, meet more or less frequently.
- Each meeting shall be held at a location as duly posted in the meeting notice in compliance with the Open Meeting Law.

#### **MINUTES:**

- The draft minutes shall be approved by a majority of the sitting members who were present at the meeting for which the minutes are prepared.

## **MEETING PROCEDURES:**

- I. Regular Meeting
- II. Site Plan Review
- III. Subdivision Hearing
- IV. Special Permit Hearing
- V. Zoning Change Hearing
- VI. P.B. Rules & Regulations & Special Permit Change

Note: this is a guide for each of the items listed.

### **I. REGULAR MEETING**

This includes, but is not limited to Preliminary Subdivisions, ANR's, informal discussions, covenant releases, Waiver of Site Plan, etc.

- 1. Chair calls meeting to order. Stating the date and time and calls meeting to order.
- 2. Chair brings each agenda item before the Board.
- 3. Chair asks for a presentation from the applicant or the applicant's representative.
- 4. After an item is presented, the Chair requests discussion or action from the Board. At this time, discussion shall be informal with the following criteria - only one speaker at a time. Board attention should be give to the speaker, and the speaker should address the subject at hand. When necessary the Chair can enforce these criteria.
- 5. Chair will ask for staff input.
- 6. Chair states any members of the Board or interested party must direct questions through the Chairman.
- 7. Chair may ask for public input.
- 8. Chair will ask for further comments from the applicant or the applicant's representative.
- 9. Chair will ask if the Board is ready to vote on the matter and if so the Chair will ask for a motion on the matter and a second. If the Board determines that additional information is necessary or the Board needs more time to think about the matter the Chair will entertain a motion and second to continue the review to a date and time certain. In either case, the Chair will entertain any further discussion. The Chair will then take a vote on the motion. In the case of a continuation of a public hearing, this matter shall also be consistent with the *Policy Regarding the Continuation of Hearings*. See Appendix 2.

10. Chair requests corrections, omissions, or additions to meeting minutes.
11. Chair requests motion to accept minutes.
12. After completion of all the agenda items, the Chair will ask for a motion and second to adjourn the meeting. The Chair will entertain discussion and then ask for a vote on the motion.

**Time Lines:**

- **Preliminary Subdivision** – The Board has 45-days from the date of submission with the Town Clerk to file its decision with the Town Clerk.
- **Approval Not Required (ANR) Plan** – The Board has 21-days from the date of submission with the Town Clerk to file its decision with the Town Clerk.
- **Covenant or other Performance Guarantee Release** – The Board has 45-days from the date the release request is received to render a decision. Failure to act results in a constructive release.
- In the event that a continuance is requested that goes beyond the time limits, the applicant and the Board must enter into a written mutual agreement to extend the time in which the Board has to take final action. This document must be executed and filed with the Town Clerk prior to the expiration of the time limit.

## **II. SITE PLAN REVIEW HEARING**

### **Procedure**

1. Chair calls hearing to order.
2. Chair states purpose of hearing, which is to inform the public and take testimony. Any final action by the Board will not be taken until after the hearing is closed.
3. Clerk reads notice, by request of Chair.
4. Chair introduces members of Board, if necessary.
5. Chair states any members of the Board or interested party must direct questions through the Chairman.
6. Chair recognizes applicants to be heard.
7. Chair recognizes staff to be heard.
8. Chair recognizes proponents and opponents to present their views.
9. Clerk reads any letters pro or con.

10. Chair asks if there are any questions from Board. At this time, any Board member may call for any pertinent information with regard to the plan being presented.
11. Chair asks for final comments from proponents or opponents. Chair may limit the time or order the discontinuance of the rebuttal.
12. Chair asks for final comments from applicant.
13. Chair will ask if the Board is ready to vote on the matter and if so the Chair will ask for a motion and second on the matter. If the Board determines that additional information is necessary or the Board needs more time to think about the matter the Chair will entertain a motion and second to continue the review to a date and time certain. In either case, the Chair will entertain any further discussion. The Chair will then take a vote on the motion. In the case of a continuation of a public hearing, this matter shall also be consistent with the Policy Regarding the Continuation of Hearings. See Appendix 2.
14. If the Board is ready to take a final vote on the matter the Chair closes the hearing and calls a meeting of the Board.
15. Action by Planning Board

**If a vote is taken, 4 of 7 members must vote in the affirmative to approve, per the Zoning Bylaw.**

**Time Line:** The Planning Board shall render a decision within ninety (90) days of the public hearing, and shall file its written decision with the Town Clerk's office and other appropriate parties in accordance with the provisions of M.G.L. Chapter 40A.

In the event that a continuance is requested that goes beyond the time limits. The applicant and the Board must enter into a written mutual agreement to extend the time in which the Board has to take final action. This document must be executed and filed with the Town Clerk prior to the expiration of the time limit.

### **III. SUBDIVISION HEARING**

#### **Procedure**

1. Chair calls hearing to order.
2. Chair states purpose of hearing, which is to inform the public and take testimony. Any final action by the Board will not be taken until after the hearing is closed.
3. Clerk reads notice, by request of Chair.



4. Chair introduces members of Board, if necessary.
5. Chair recognizes applicants to be heard.
6. Chair states any members of the Board or interested party must direct questions through the Chairman.
7. Applicant/Representative present the green cards and receipts, to determine that abutters were notified via certified mail.
8. Chair recognizes staff to be heard.
9. Chair recognizes proponents and opponents to present their views.
10. Clerk reads any letters pro or con.
11. Chair asks if there are any questions from Board.

At this time the Chair or any Board member may call for any pertinent information in regard to the plan being presented.

12. Chair asks for final comments from proponents or opponents. Chair may limit the time or order the discontinuance of the rebuttal.
13. Chair asks for final comments from applicant.
14. Chair will ask if the Board is ready to vote on the matter and if so the Chair will ask for a motion and second on the matter. If the Board determines that additional information is necessary or the Board needs more time to think about the matter the Chair will entertain a motion and second to continue the review to a date and time certain. In either case, the Chair will entertain any further discussion. The Chair will then take a vote on the motion. In the case of a continuation of a public hearing, this matter shall also be consistent with the *Policy Regarding the Continuation of Hearings*. See Appendix 2.
15. Chair closes the hearing and calls a meeting of the Board.
16. Action by Planning Board

**If a vote is taken, a simple majority of the full Board, 4 out of 7, is require for an affirmative vote, per Subdivision Control Law, MGL c.41**

**Time Line:** The Board need not take action at this time, but must take final action under the following timetable:

- **Definitive Plan preceded by a Preliminary Plan** – 90 days from date of submission of the Definitive Plan.
- **Definitive Plan not preceded by a Preliminary Plan** – 135 from date of submission of Definitive Plan.
- **Non-Residential Subdivision (Preliminary Plan required)** – 90 days from date of submission of Definitive Plan.

In the event that a continuance is requested that goes beyond the time limits. The applicant and the Board must enter into a written mutual agreement to extend the time in which the Board has to take final action. This document must be executed and filed with the Town Clerk prior to the expiration of the time limit.

**Failure to act may result in constructive approval.**

#### **IV. SPECIAL PERMIT HEARING**

##### **Procedure**

1. Chair calls hearing to order.
2. Chair states purpose of hearing, which is to inform the public and take testimony. Any final action by the Board will not be taken until after the hearing is closed.
3. Clerk reads notice, by request of Chair.
4. Chair introduces Board members, if necessary.
5. Chair states any members of the Board or interested party must direct questions through the Chairman.
6. Staff will confirm that notice to abutters were mailed.
7. Chair recognizes applicant to be heard.
8. Chair recognizes staff to be heard.
9. Chair recognizes proponents and opponents to present their views.
10. Clerk reads letters pro or con.
11. Chair at his discretion may call upon any attending official or members of other committees for pertinent information.
12. Chair asks for final comments by proponents and opponents. Chair may limit the time or order the discontinuance of the rebuttal.

13. Chair asks for final comments from applicant.
14. Chair will ask if the Board is ready to vote on the matter and if so the Chair will ask for a motion and second on the matter. If the Board determines that additional information is necessary or the Board needs more time to think about the matter the Chair will entertain a motion and second to continue the review to a date and time certain. In either case, the Chair will entertain any further discussion. The Chair will then take a vote on the motion. In the case of a continuation of a public hearing this matter shall also be consistent with the *Policy Regarding the Continuation of Hearings*. See Appendix 2.
15. Chair closes the hearing and calls a meeting of the Board. - Asks what action Board wishes to take.

**A 2/3 vote of the full Board is required for an affirmative vote (5 members minimum must be present to vote.)**

**Time Line:** Decision must be made within 90 days of the close of the public hearing (MGL c. 40A, §9).

**Failure to act may result in constructive approval.**

## **V. ZONING AMENDMENT HEARING**

### **Procedure**

1. Chair calls hearing to order.
2. Chair states purpose of hearing, which is to inform the public and take testimony and to allow the Board to vote to recommend, or not, the article to the Town Meeting.
3. Clerk reads notice, at request of Chair.

Reading of entire notice may be waived if there is no objection, and an explanation of the by-law, may be given at this time.

4. Chair states current status of zoning by-law change.

i.e., whether the proposed by-law is by petition or by the Planning Board. What, if any, action the Board has made to date. Point out that any final action by the Planning Board will not be made until after the hearing, and should this by-law go before Town Meeting, the final decision will rest with the people.

5. Chair introduces members, if necessary.

6. Clerk reads letters pro and con, by request of Chair.
7. Chair instructs everyone on meeting procedure.

Any Board member or member of the audience must direct their questions through the Chair. There is no time limit, but comments should be brief and to the point. Each speaker must identify himself and may speak more than once, but only after all others have spoken. The Board may require documentation from any individual who presents himself as representing groups or other individuals.

8. Chair recognizes speakers.

If the zoning change is by petition, recognize the petitioner first.

9. Chair closes discussion after all testimony.
10. Chair closes hearing and calls meeting of the Board.

Asks Board what action they wish to take.

11. Action by Planning Board - Board may vote whether to recommend the article to the Town Meeting at this time or postpone to a later date . Board must act and report within 21 days of hearing. (Chapter 40A, Section 5)
12. Town Meeting Action - Town must act within six months of hearing. (Chapter 40A, Section 5)
13. Please refer to Appendix 3 for the *Outline for Zoning By-Law Amendments* and Appendix 4 for *Effective Date of New Amendment* and Appendix 5 for *Exemptions From Zoning Amendments (c. 40A, §6)*.

## **VI. CHANGES TO PLANNING BOARD SUBDIVISION OF LAND RULES & REGULATIONS**

The Board may adopt and amend the rules and regulations from time to time not inconsistent with the subdivision control law or any other provision of applicable statutes or any town by-law. (MGL c.41, §81Q)

No change can be adopted until after a public hearing. Notice of said hearing shall be published in a local paper fourteen (14) days before the day of the hearing.

### **Procedure**

1. Chair calls hearing to order.

2. Chair states purpose of meeting, which is to inform the public and take testimony. Any final action by the Planning Board will be after the hearing.
3. Clerk reads notice, by request of Chair.
4. Chair introduces members of Board, if necessary.
5. Chair may give or call upon a Board member to give a brief explanation of the requested change.
6. Clerk reads any letters pro or con, by request of Chair.
7. Chair opens the discussion to those attending the meeting and instructs those wishing to speak to do so through the Chair.
8. Chair calls for any final comments.
9. Chair closes the hearing and calls a meeting of the Planning Board.
10. Action by Planning Board

Need not take action at this time and no time limit is required for action by Board.

**PROCEDURE AFTER ADOPTION** - A copy of the amendment must be certified by the Town Clerk.

The Planning Board then sends by registered mail the certified copy to the Registry of Deeds and Land Court. (MGL c.41, §81Q)

**EFFECTIVE DATE OF AMENDMENT**

The amendment becomes effective the day it is received by the Registry and Land Court. (Chapter 41 81-Q)

**QUESTIONS AND ANSWERS**

**FRONTAGE AND AREA**

Q. Can the Planning Board waive lot and area requirements:

A. No. The petitioner's recourse is relief from the Zoning Board of Appeals.

**RULES AND REGULATIONS**

Q. Can the Planning Board waive its own subdivision rules and regulations?

A. Yes, under Section 1.5 of the Rules and Regulations.

**ZONING AND PLANS**

Q. Can the Planning Board waive zoning by-laws?

A. No. The petitioner's recourse is relief from the Zoning Board of Appeals.

Q. In considering subdivision plans, should the Planning Board be concerned with zoning?

A. Yes. Chapter 41, §81-M states that the powers of the Planning Board under the subdivision control law shall be exercised with due regard for insuring compliance with zoning.

Q. Can the Planning Board sign plans which show zoning violations?

A. Yes, but only if the Zoning Board of Appeals has granted the necessary relief from the zoning. A variance has the legal effect of bringing a violation into compliance.

#### **APPROVAL NOT REQUIRED**

It is possible that an ANR plan could meet all criteria as written in the statute and still create a zoning violation, Chapter 41, §81L. The Planning Board is required to sign this plan; however, this does not mean the lot is buildable or that the use is conforming. Because of future legal problems, it is suggested that the petitioner go to the Board of Appeals for a variance or variances for his own benefit. (*Ann Smalley v. Town of Truro*).

Q. Can the Planning Board sign a plan which makes a lot more non-conforming?

A. Generally speaking - No. Petitioner recourse is Zoning Board of Appeals.

#### **ZONING CHANGE – SPOT ZONING**

Q. Does the Planning Board have to consider spot zoning when proposing the rezoning of districts?

A. Yes. The case of *James Farina Corp. v. City of Newton* restated the rule of law used prior to the adoption of St. 1975, c. 808, s. 3. Spot zoning is still not viable, and the Planning Board should consider this question whenever a zoning ordinance is proposed.

#### **SUBDIVISION**

Q. Can the Zoning Board of Appeals subdivide land?

A. No. But it can grant variances to zoning, front, side and rear setbacks, as well as frontage and area.

#### **COVENANT**

Q. What happens when a plan is approved but not signed because there is no covenant.

A. The Board should not sign the plan until such time as there is also a covenant to sign, if applicable. Not all subdivisions will require a covenant.

#### **MEETINGS**

Q. Can a public hearing be held if a quorum of the Board is not present?

A. No. There must be a voting quorum present and only those who were present to hear testimony may vote if vote is taken at another meeting.

## APPENDIX 1

### **Planning Board Agenda Policy**

**Applications requiring public hearings** (Definitive Subdivisions, Special Permits, and Site Plan) shall be filed in accordance with the Truro Planning Board Hearing/Meeting Schedule established for the calendar year and the agenda date shall be as shown on the Schedule.

**All other applications** (ANR, Preliminary Subdivision and Waivers from Site Plan) will be scheduled accordingly and in compliance with the Subdivision Control Laws and/or other applicable local requirements.

**All other requests** (informal discussion, lot/covenant release, consultations, etc.) must be received by the Planning Office no less than one week before a scheduled meeting date as established by the Truro Planning Board Hearing/Meeting Schedule established for the calendar year. Submittal deadline is at noontime. (For example for a Tuesday meeting on March 13, the request and applicable information for the Planning Board's review must be received by noontime on Tuesday, March 6). In some cases, depending upon the length of the agenda and at the discretion of the Planning Board Chair, an item may be put off to a future meeting date, if time allows.

**Requests from Planning Board members** must be made to the Planning Board Chair, with a copy or notice to the Assistant Town Administrator, no later than noontime the week before the scheduled meeting as established by the Truro Planning Board Hearing/Meeting Schedule established for the calendar year. (For example for a Tuesday meeting on March 13, the request and applicable information for the Planning Board's review must be received by noontime on Tuesday, March 6). In some cases, depending upon the length of the agenda and at the discretion of the Planning Board Chair, an item may be put off to a future meeting date, if time allows.

For the purposes of the Planning Board Agenda, the term “**Any other business which may legally come before the Board**”, shall include, but is not limited to: applications for ANR plans which may come in after the agenda closes, but the next meeting date is beyond the 21-days in which the Planning Board has to act; emergency discussion which may arise after the close of the agenda, such as a request from the Board of Selectmen or Town Counsel, which may require action before the next regularly scheduled meeting and any other emergency situations which may arise.

## **APPENDIX 2**

### **Policy Regarding the Continuation of Hearings**

Adopted by the Truro Planning Board effective June 29, 2011

Once a public hearing has been advertised and the notices to abutters have been mailed, the public hearing must be opened on the date and time advertised. Only then, once the hearing has been opened, can the Planning Board entertain an applicant's request for a continuation of the hearing to a date and time certain.

Thereafter, if the applicant requests that the public hearing be further continued, the Planning Board shall only grant the continuance for good cause shown. The Board may deny the application for procedural reasons or the Board may consider a request for a withdrawal without prejudice, in the event that the applicant fails to comply with this requirement.



## Appendix 3

### **OUTLINE FOR ZONING BY-LAW AMENDMENTS** **MGL c.40A, §6**

1. Zoning proposal submitted to Board of Selectmen.
2. Within 14 days receipt, Board of Selectmen must submit proposal to Planning Board for review.
3. Within 65 days after submittal, Planning Board must hold public hearing.
4. Notice of Hearing.
  - a. published in newspaper of general circulation once in each of 2 successive weeks; 1<sup>st</sup> publication not less than 14 days before day of hearing. Case law states that “successive” weeks means calendar weeks.
  - b. posted in conspicuous place in Town Hall for 14 days before day of hearing.
  - c. mailed to all of the following:
    1. Department of Housing and Community Development (DHCD).
    2. Regional Planning Agency.
    3. Planning Boards of all abutting cities and towns.
  - d. mailed, if zoning by-law or ordinance so requires, to all non-resident property owners who file proper request for such notice with municipal clerk.
5. Content of notice must include:
  - a. date and place of hearing.
  - b. subject matter of hearing “sufficient for identification”
  - c. place where maps and texts of proposal may be inspected.

NOTE: All of these notice requirements must be carefully followed.
6. Town Meeting may not vote on proposal until either
  - a. Planning Board submits written or oral report with recommendations, or
  - b. 21 days have elapsed between Planning Board hearing and Town Meeting or City/Town Council vote.
7. Proposal must be voted by Town Meeting, within 6 months of Planning Board hearing.
8. Quantum of Vote: 2/3 vote by Town Meeting
9. Zoning bylaw unfavorably acted upon by Town Meeting or City/Town Council may not be reconsidered within 2 years unless Planning Board makes recommendation to do so.
10. Zoning (and general) bylaws must be submitted to the Attorney General for approval:

- a. within 30 days after final adjournment of Town Meeting, town clerk must submit:
  1. certified copy of bylaws
  2. request for approval
  3. statement explaining bylaw
  4. maps and plan, if any
  5. proof of procedural
11. Bylaws approved by Attorney General (including those made effective by Attorney General's failure to act in within 90 days of Town's submittal) must be:
  - a. published in a town bulletin/pamphlet copies of which must be posted in at least 5 public places, including 1 or more public places in each precinct, if applicable.
  - or b. published at least twice one week apart in newspaper generally circulated in town.
  - or c. delivered to every occupied dwelling or apartment in town (affidavits or persons delivering said copies must be filed with town clerk).
12. A true copy of a zoning ordinance or bylaw with all amendment must be kept on file in the City/Town or town clerk's office.

## APPENDIX 4

### EFFECTIVE DATE OF NEW ORDINANCE OR AMENDMENT

The effective date is the date it was voted by Town Meeting, conditional on following certain procedures after town meeting.

If the change is disapproved by the Attorney General, the previous zoning by-law shall be deemed to have been in effect from the date of such vote.

### PROCEDURE AFTER TOWN MEETING:

(Chapter 40A, Sec. 5, Para. 7)  
(Chapter 40, Sec. 32, Para. 1)  
(Chapter 40, Sec. 32A, Para. 1)

1. The adopted zoning change shall be submitted by the Town Clerk to the Attorney General.
2. The Attorney General approves or fails to act upon the zoning change within 90 days after receipt. If the Attorney General fails to act within 90 days, the Town Clerk shall enter into the records a statement that the by-law has become effective by reason of such failure of the Attorney General to act within the time limit.
3. After the Attorney General approves the zoning change or fails to act within the 90 days, it shall be either
  - A. published in a town bulletin or pamphlet and posted in one or more public places in each precinct of the town with the total posting being in at least five public places, or
  - B. published in a newspaper of general circulation in the town. Such publication shall take place twice at least one week apart.
4. The publication of a zoning change shall include a statement similar to the following:

“Any Claims of Invalidity by reason of any defect in the procedure of adoption/amendment of this by-law/amendment may only be made within 90 days of this posting/the second publication (or if the time works out to be longer, within one hundred and twenty (120) days after the adoption of the by-law amendment. Copies of this by-law amendment may be examined and obtained at Truro Town Office.”

A copy of the effective zoning change must be sent by the Town Clerk to the Department of Community Affairs, 100 Cambridge Street, Room 904, Boston, Massachusetts 02202. (Chapter 40A, Section 5, Para. 8)

## **APPENDIX 5**

### **EXEMPTIONS FROM ZONING AMENDMENTS (40A.6)**

As Of 1-01-1981

**PLANS IN PROGRESS AT TIME OF ZONING CHANGE** – exempt during processing (including time to await and settle appeals). Applies to Preliminary Plans followed within 7 months by Definitive Plans and to Definitive Plans if either was submitted before vote to change zoning.

**ENDORSED SUBDIVISION PLANS** – exempt for 8 years from date endorsed (7 years if endorsed before 1-01-76). Exemption applies to both use and dimensional changes.

**ENDORSED APPROVAL-NOT-REQUIRED PLANS** –exempt for 3 years from date endorsed, from changes in use but NOT from dimensional changes.

**AMENDED OR EXPANDED PLAN**—exemption unaffected except insofar as waived by applicant.

**ADJOINING ONE- OR TWO-FAMILY LOTS**—exempt for 5 years from effective date of zoning change, from greater area, frontage, width, yard and depth requirements if, as of 1-01-76:

- lot WAS held in common ownership with adjoining land;
- lot conformed to zoning in effect on 1-01-76;
- lot had at least 7,500 sq. ft. area and 75 ft. frontage (unless current zoning does not require that much);
- lot is one of not more than three adjoining lots in common ownership granted such exemption; and
- current zoning permits the proposed one- or two-family use.

**BUILDING PERMITS AND SPECIAL PERMITS ISSUED BEFORE FIRST NOTICE OF HEARING ON PROPOSED ZONING CHANGE**—exempt 6 months from date permit issued, provided construction or operation is begun within said period and carried forward expeditiously to completion.

**SUBDIVISION PLANS SUBMITTED BEFORE EFFECTIVE DATE OF R & R CHANGE** –exempt indefinitely. Applies also to Preliminary Plans, provided these are followed within 7 months by the Definitive Plan. (BUT NOTE: If a new subdivision plan is submitted voluntarily, or as a result of expiration of zoning exemptions, or of a rescission, the new plan is bound by the Rules in effect at the time of re-submittal, EXCEPT for those lots already sold).